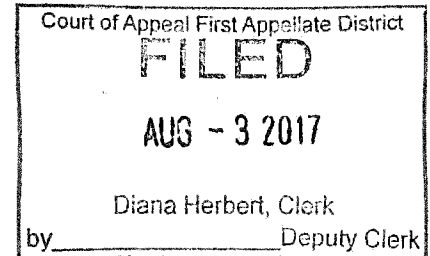


EXHIBIT E

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE



WARREN HAVENS,

Petitioner,

v.

SUPERIOR COURT FOR THE COUNTY OF

ALAMEDA,

Respondent;

SUSAN UECKER,

Real Party in Interest.

A150411

Alameda No. 2002070640

ORDER ISSUING ALTERNATIVE WRIT OF PROHIBITION

BY THE COURT:*

The court has conducted a detailed review of the record and the parties' briefing regarding this petition.

"In a contempt proceeding resulting in punitive sanctions . . . , guilt must be established beyond a reasonable doubt. [Citation.] A reviewing court will uphold a contempt judgment only if there is substantial evidence to sustain the jurisdiction of the trial court." (*Mitchell v. Superior Court* (1989) 49 Cal.3d 1230, 1256.) "In the review of a contempt proceeding 'the evidence, the findings, and the judgment are all to be strictly

* Before Simons, Acting P.J., Needham, J., and Bruiniers, J.

construed in favor of the accused [citation], and no intendments or presumptions can be indulged in aid of their sufficiency. [Citation.] If the record of the proceedings, reviewed in the light of the foregoing rules, fails to show affirmatively upon its face the existence of all the necessary facts upon which jurisdiction depended, the order must be annulled.’ [Citation.]” (*Ibid.*, italics omitted.) “A finding of indirect contempt . . . must be based upon a clear, specific, and unequivocal order.” (*In re Marcus* (2006) 138 Cal.App.4th 1009, 1016.) “ ‘Any ambiguity in a decree or order must be resolved in favor of an alleged contemnor.’ ” (*Id.* at p. 1015.)

Respondent superior court erred when it found petitioner’s September 2, 2016 submission to the Federal Communications Commission (FCC) violated a court order. The superior court’s November 16, 2015 order prohibited petitioner from “[c]ommunicating with the FCC regarding the FCC Licenses or the Receivership Entities.” That order was “clarifi[ed]” by the superior court’s July 11, 2016 order prohibiting petitioner from communicating “in a manner that might lead to the recipient of the communication to infer that the communication from [petitioner] may be on behalf of any Receivership Entity.” This court, having reviewed the record concerning respondent superior court’s July 11, 2016 order, determines that the most reasonable construction of respondent’s orders is that petitioner was permitted to communicate with the FCC as long as he clearly indicated he was not speaking on behalf of any Receivership Entity. Consequently, the contempt adjudication as to this count appears erroneous under the foregoing standards, because substantial evidence does not exist to sustain this contempt finding.¹

Therefore, let an alternative writ of prohibition issue prohibiting respondent Alameda County Superior Court from taking any further action on the December 14, 2016 “Order Holding Warren Havens in Contempt for Failure to Comply with Court Orders,” in *Arnold Leong v. Warren Havens, et al.*, Case No. 2002-070640, other than to vacate the finding that petitioner’s September 2, 2016 filing to the FCC violated a court order, and to impose a new punishment excluding this contempt finding; or, in the alternative, to appear and show cause before Division Five of this Court why a peremptory writ of prohibition should not issue.

¹ In light of this court’s conclusion concerning this contempt count, it is unnecessary to reach petitioner’s other challenges to that count. Additionally, the court has considered petitioner’s challenge to the remaining contempt count and concludes it does not appear petitioner has persuasively demonstrated an entitlement to writ relief regarding that count. Therefore, this alternative writ does not extend to that claim.

If respondent superior court complies with this court's directives as set forth above, and does so on or before September 5, 2017, the court will dissolve the stay previously imposed, discharge the alternative writ, and dismiss the petition as moot.

This court requests that respondent superior court inform this court of its decision as soon as possible, and provide this court with copies of any new orders issued by respondent.

Should respondent court choose not to follow the above procedure, but instead to appear and show cause before this court why a peremptory writ of prohibition should not issue, this matter will be heard before Division Five when ordered on calendar.

The alternative writ is to be issued, served and filed on or before August 4, 2017, and shall be deemed served upon mailing by the clerk of this court of certified copies of the alternative writ and this order to all parties and to respondent superior court.

A written return to the alternative writ shall be served and filed on or before September 20, 2017, and a reply to the return shall be served and filed on or before October 5, 2017. (Cal. Rules of Court, rule 8.487(b).) If, however, respondent superior court complies with the alternative writ, and proof thereof is filed herein on or before those dates, then no return or reply need be filed.

Date AUG - 3 2017

Simons, J. Acting P.J.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
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WARREN HAVENS,

Petitioner,

v.

SUPERIOR COURT FOR THE COUNTY OF

ALAMEDA,

Respondent;

SUSAN UECKER,

Real Party in Interest.

A150411

Alameda No. 2002070640

ALTERNATIVE WRIT OF PROHIBITION

To the Superior Court of the State of California, in and for the County of Alameda, Greetings:

The petition for writ of habeas/certiorari/prohibition on file herein having been considered and good cause appearing for the issuance of this alternative writ of prohibition,

WE COMMAND YOU, forthwith upon receipt of this writ to either:

(a) Take no further action on the December 14, 2016 "Order Holding Warren Havens in Contempt for Failure to Comply with Court Orders," in *Arnold Leong v. Warren Havens, et al.*, Case No. 2002-070640, other than to vacate the finding that petitioner's September 2, 2016 filing to the Federal Communications Commission violated a court order, and to impose a new punishment excluding this contempt finding; OR;

(b) In the alternative, show cause before this court when ordered on calendar, why a peremptory writ of prohibition should not issue.

Respondent court shall make a decision whether to comply with the directive of paragraph (a) on or before September 5, 2017. If respondent court chooses to comply, the stay will be dissolved, the alternative writ will be discharged and the petition will be dismissed as moot. If respondent court instead elects to show cause, the matter will be heard when ordered on calendar.

This court requests that respondent superior court inform this court of its decision as soon as possible, and provide this court with copies of any new orders issued by respondent.

Witness the Honorable Mark B. Simons, Acting Presiding Justice of the Court of Appeal of the State of California, First Appellate District, Division Five.

Attest my hand and the Seal of this Court this 3rd day of August, 2017.

DIANA HERBERT
Clerk of the Court

By: A. Reasoner
Ann Reasoner
Deputy Clerk

I, DIANA HERBERT, CLERK OF THE COURT OF
APPEALS STATE OF CALIFORNIA, FIRST
APPELLATE DISTRICT, DO HEREBY CERTIFY
THAT THIS PRECEDING AND ANNEXED IS A
TRUE AND CORRECT COPY OF THE ORIGINAL
ON FILE IN MY OFFICE.

WITNESS MY HAND AND THE SEAL OF THE COURT
THIS 3rd DAY OF August 2017

BY Ann Reasoner CLERK
DEPUTY